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SUBJECT: Retirement Coverage For Senior  
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Take Presidential Appointments With  
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Attached is a memorandum from the Office of Personnel Management (OPM) which explains retirement coverage for career Senior Executive Service members who accept a Presidential appointment with Senate confirmation. We request that Personnel Offices review Presidential appointments made since November 10, 1988, for correct retirement coverage and take corrective action immediately, if necessary. In addition, operating personnel office staff members should be made aware of the contents of the OPM memorandum to avoid mistakes in determining retirement coverage.

If there are any questions, contact Terry Smith in the Labor and Employee Relations Division (M-17). Terry can be reached on 366-9440.

Attachment

  
Director of Personnel

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United States  
**Office of  
Personnel Management**

Washington, D.C. 20415

In Reply Refer To.

Your Reference

**APR 17 1989**

MEMORANDUM TO DIRECTORS OF PERSONNEL

Subject: Retirement Coverage For SES Career Appointees Who Take  
Presidential Appointments With Senate Confirmation

Under 5 U.S.C. 3392(c) and 5 CFR Part 317, Subpart H, Senior Executive Service (SES) career appointees who receive Presidential appointments with Senate confirmation to positions paid at Executive Level V or higher may elect to retain certain SES benefits.

OPM has advised agencies in the past that if a career appointee elected to continue SES retirement benefits, the individual could retain whatever retirement coverage was previously applicable under the SES career appointment. For example, if an individual was under the Civil Service Retirement System (CSRS) in the SES, the individual could stay under CSRS as a Presidential appointee without being subject to Social Security coverage. This was true even though individuals appointed to positions at Executive Levels I through V that are listed in 5 U.S.C. 5313-17 would normally automatically be subject to Social Security coverage under the Social Security Amendments of 1983 (P.L. 98-21).

The exception for SES career appointees to the mandatory Social Security coverage for Executive Level positions was possible because the 1983 Amendments did not indicate how they were to be interpreted in the light of 5 U.S.C. 3392(c) and because the Social Security Act and the Internal Revenue Code allowed the head of each agency to determine whether particular Federal employment was subject to Social Security. The Miscellaneous Revenue Act of 1988 (P.L. 100-647, November 10, 1988), however, amended the Social Security Act and the Internal Revenue Code to provide that in the future the Secretaries of Health and Human Services and Treasury, not the heads of individual agencies, would make the determination of whether an individual's service constitutes Social Security covered Federal employment.

OPM requested an opinion on the impact of P.L. 100-647, from the Internal Revenue Service (IRS), Department of Treasury. IRS responded on March 6, 1989. It stated that the legislative history of the new Act indicated that the principal reason for the amendment affecting coverage determinations was Congressional concern about determinations that were being made regarding the Social Security status of SES career appointees who move to Presidential appointments. Based on the provisions of the Act and the legislative history, IRS concluded that:

- (1) If an SES career appointee is appointed on or after November 10, 1988, to an Executive Level I through V position that is listed in 5 U.S.C. 5312-5317, the individual is subject to mandatory Social Security coverage and thus full FICA deductions (including the Old-Age, Survivors, and Disability Insurance tax), regardless of whether the appointee makes an election under 5 U.S.C. 3392(c).
- (2) The conclusion in (1) does not apply to an SES career appointee who was appointed to one of the listed positions in 5 U.S.C. 5312-5317 before November 10, 1988. Thus, if the individual is currently under CSRS, without full FICA deductions, there is no change in the individual's retirement status. If the individual is appointed to a new position<sup>or</sup> after November 10, 1988, however, and the position is listed under 5 U.S.C. 5312-5317, the conclusion in (1) does apply.
- (3) If an individual returns to an SES position from a Presidential appointment in which he or she has been subject to mandatory Social Security coverage, the individual remains subject to full FICA deductions in the SES position, regardless of whether the individual had made an election under 5 U.S.C. 3392(c).

In light of the IRS opinion, an SES career appointee who, on or after November 10, 1988, receives a Presidential appointment with Senate confirmation to a position at Executive Level I through V that is listed in 5 U.S.C. 5312-5317 will have his or her retirement coverage determined as follows:

- (1) If the individual is under FERS in the SES, the individual remains under FERS in the Presidential appointment.
- (2) If the individual is under CSRS Offset in the SES, the individual remains under CSRS Offset in the Presidential appointment.
- (3) If the individual is under full CSRS in the SES, and has at least 5 years of creditable civilian service at the time of the Presidential appointment, the individual goes under CSRS Offset in the Presidential appointment. The individual then has a 6-month opportunity to elect FERS if he or she desires. (If the individual does not have the 5 years of service, the individual automatically goes under FERS.)

Under CSRS Offset, an employee is covered under CSRS and Social Security. The CSRS withholdings are offset by the amount of the Social Security Old-Age, Survivors, and Disability Insurance tax. At retirement, the civil service retirement benefit is reduced by the amount of the social security benefit the person is entitled to that is attributable to the post-1983 service. The offset is made when the basic requirements for Social Security are met (usually at age 62).

If you have any questions, you can call Neal Harwood on (202) 632-4496.

  
 Kirke Harper  
 Director  
 Office of Executive Personnel